IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/10/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 20200 OF 1998

S.S. Mohunraj .. Petitioner

-Vs-

1. The Govt. of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration Department,
Fort St. George,
Chennai 600 009.

2. The Govt. of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel & Administrative Department,
Fort St. George,
Chennai 600 009.

3. The Commissioner of Town
Panchayats,
Kuralagam,
Chennai 600 108.

4. The Executive Officer,
Ponneri Town Panchayat,
Ponneri District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. C. Selvaraju for
Mr.A. Arul Sagai

For Respondents 1-2 : Mr.P.S. Jayakumar
Govt. Advocate

Respondent-3 : Mr.V. Subbarayan
Special Govt. Pleader

Respondent-4 : Mr.K.R. Tamizhmani

:J U D G M E N T

The question in this writ petition relates to regularisation of appointment made on compassionate ground. But the manner of dealing with the matter by the respondent is anything but compassionate.

2. The petitioner was appointed as a Record Clerk on 2.7.1991 in the Office of the Sriperumbudur Town Panchayat after the death of his adoptive father, who while working as Sanitary Supervisor has died in harness on 16.3.1989. Subsequently, an order of termination was passed on 9.5.1995 even without issuing any notice to the petitioner on the ground that the petitioner had been adopted after the death of the employee and the adoption was opposed to the provisions contained in the Hindu Adioption and Maintenance Act as the person adopted was more than 15 years old. At that stage the petitioner had filed W.P. No.11895 of 1995 wherein the High Court while quashing the order of termination had directed the respondent No.3 to send proposal for regularisation of the services of the petitioner. Inspite of the aforesaid direction, the matter remained in cold-storage for a pretty longtime and the third respondent maintained a sphinx like silence. The petitioner was again forced to knock at the doors of justice by filing W.P.No.4715 of 1998 and this Court gave a direction that the order passed in the earlier writ petition should be complied with. Thereafter the impugned order has been passed by the third respondent. The relevant portion of the order is as follows :-

" . . . As per G.O.Ms.2899 Labour and Employment Dept dt 23.12.88 the adopted son/daughter (unmarried) are entitled to get appointment on compassionate ground, but the adoption should be made during the life time of the deceased employee while he was alive.

But, Thiru S. Mohan has been adopted after the death of the deceased employee by the wife of the deceased. Therefore it is hereby informed that the above adoption of S. Mohan is contrary to the Govt rules and therefore he is not entitled to get appointment on compassionate ground. . . . "

3. The present writ petition has been filed for quashing the aforesaid order and for giving a direction to absorb the petitioner on regular basis.

4. Learned counsel appearing for the petitioner has submitted that the impugned order proceeds on a wrong premise regarding adoption. The impugned order shows as if the petitioner was adopted by the widow of the deceased employee after the death of the employee. In fact the petitioner had been adopted during the lifetime of the employee and only a registered deed of acknowledgment of adoption has been executed by the widow after the death of the employee. This position is clear from the fact that the petitioner had been nominated as nominee to receive the gratuity amount in the prescribed Form-B on 9.5.1983, wherein he had been described as the "son". Similarly the petitioner had been nominated as the "son" for the purpose of family pension and other benefits at a stage when there was no dispute at all regarding the matter. Apart from the above, even in the deed of acknowledgment of the prior

adoption it has been clearly stated that the petitioner had been adopted in 1980. Merely because the deed of acknowledgment of prior adoption was executed in 1989 by the adoptive mother after the death of the adoptive father, the respondents could not have assumed that the adoption itself has taken place after the death of the employee. The very fact that the petitioner has been shown as the son in the papers relating to nomination in the service records of the year 1983 belies such assumption on the part of the respondents.

5. Learned counsel appearing for the respondents has submitted that even assuming that the adoption has taken place during the lifetime of the deceased employee, in view of G.O.Ms.No.2899 dated 23-12-1998, the petitioner was not eligible to be appointed on compassionate ground as the adoption had not been registered by the deceased Government servant during his lifetime.

6. The relevant portion of G.O.Ms.No.2899 dated 23.12.1998 is to the following effect :-

" . . . According the orders governing the scheme of of providing employment assistance to a dependant of a Government servant who dies in harness leaving his family in indigent circumstances, a legally adopted son and legally adopted unmarried daughter of the deceased Government servant is also eligible for appointment on compassionate grounds subject to all other conditions being satisfied. Instances of cases where adoption has taken place after the death of Government servant have been brought to the notice of Government and orders of Government for providing employment to such adopted sons have been sought for.

2. Employment assistance on compassionate grounds is provided with a view to give immediate relief to the family of deceased Government servant after taking into account the indigent circumstances of the family prevailing at the time of death of the Government servant. Though the adoption made and registered by the widow after the death of the Government servant may be valid in law, adopted member was not a member of the family of the deceased Government servant at the time of the death of Government Servant. If employment assistance is provided to a person adopted after the death of the Government servant it would only encourage to circumvent the orders governing the scheme and derive unintended benefits under the above scheme. It is therefore, clarified that the legally adopted son/unmarried adopted daughter of the deceased Government servant is eligible for compassionate appointment only if the adoption was made and registered by the deceased Government servant during the life time of the Government servant and also subject to other conditions prescribed by the Government for such compassionate appointment being fully satisfied." (emphasis supplied)

7. From paragraphs 1 and 2 of the order, which are extracted above, particularly the emphasised portion, it is apparent that the intention of the Government is to prevent the claim of appointment by an adopted child where the adoption is made by the widow after the death of the Government

servant. If the order is read in its entirety, it is apparent that the clear intention of the Government is to prevent the persons, who are adopted after the death of the Government servant, to claim employment on compassionate ground. Even if the law permits the widow to adopt after the death of the husband and such adopted child is considered as the child of the deceased husband under the Hindu Adoption and Maintenance Act, the intention of the Government is to provide employment only to the person who is already adopted during the lifetime of the employee.

8. It has been argued that even if a person is adopted during the lifetime of the employee, but there is no registered deed of adoption, such person would not be entitled to claim employment on compassionate ground in view of the clarification dated 23.12.1988. It has to be remembered that for any adoption to be valid, the ceremony of adoption, that is to say, giving and taking have to take place and mere execution of a registered deed of adoption is not sufficient. The registration of the document relating to adoption only raises a statutory presumption regarding adoption itself as apparent from the provisions contained in Section 16 of the Hindu Adoption and Maintenance Act. Therefore, a registered deed of adoption signed in the manner indicated in Section 16 only raises a statutory presumption, but does not constitute adoption by itself. The insistence of the Government for the registered document is only for the purpose of satisfying itself regarding the adoption because at the stage of considering whether benefit should be given or not the employer would not be in a position to find out about the actual adoption and it is expected to act only if there is a registered document. This does not, however, mean that where there is unchallenged material relating to adoption, such an adopted child is to be ignored for the purpose of employment on compassionate ground merely because there is no registered document. For example, supposing there is a decree declaring the status of an adopted son, would it be open to the Government to ignore the decree merely because there is no registered deed of adoption. In other words, where there is sufficient materials regarding adoption, it would not be proper to ignore the application for appointment on compassionate ground merely because there is no registered deed of adoption. In the present case, as already indicated, the deceased employee himself had nominated the adopted child as his nominee long before his death and in view of such official record, there was hardly any scope to entertain any doubt regarding the matter.

9. Even assuming that G.O.Ms.No.2899 dated 23.12.1988 would be otherwise applicable, such G.O., cannot be given retrospective effect and it is to be made applicable to the adoptions which had taken place after 23.12.1988 and not to the adoptions which had taken place prior to that date.

10. Learned counsel appearing for the petitioner has submitted with enough justification that whatever might be the irregularity in the original employment, there was no scope for terminating the services of the petitioner in 1995 and that too without issuing any notice. He has further submitted that the High Court on the earlier occasion had quashed the order of termination and the only question was relating to regularisation for

which a direction was made to the Government for considering the representation and it was not open to the respondents to go behind the earlier order.

11. Even assuming that there was some irregularity in the earlier appointment made in the year 1991, the petitioner had continued for about 4 years and thereafter there was no justification to suddenly terminate the services even without issuing any notice.

As observed in A.I.R. 1977 SC 112 (NAYAGAR CO-OPERATIVE CENTRAL BANK v. NARAYAN), it has to be held that even if a person is appointed to the post erroneously and was allowed to continue on the said post for a long time, he could not be removed from the said post in the garb of rectification of mistake as the doctrine of acquiescence is applicable.

12. For the aforesaid reasons, the writ petition is allowed and the impugned order is quashed and the petitioner's appointment should be deemed to be regular and continuous for all purpose. However, it is made clear that no amount would be paid to the petitioner for the past period as backwages and future wages have to be paid from the date of rejoining. The petitioner should be allowed to rejoin within a period of one month from the date of the communication of the order. There will be no order as to costs.

Index : Yes
Internet : Yes
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